

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERIC NEUBURGER)	
Claimant)	
VS.)	
)	Docket No. 176,895
AMRE, INC.)	
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

The respondent, AMRE, Inc., and its insurance carrier, National Union Fire Insurance Company, requested review of the Award dated June 29, 1995, entered by Administrative Law Judge Alvin E. Witwer.

APPEARANCES

Claimant appeared by his attorney, Scott M. Price of Salina, Kansas. Respondent and its insurance carrier appeared by their attorney, Brian G. Boos of Shawnee Mission, Kansas. The Workers Compensation Fund appeared by its attorney, Robert L. Kennedy of Kansas City, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge found claimant to be both an uninsured sub-contractor and a statutory employee of the respondent and awarded claimant benefits based upon the 22½ percent stipulated functional impairment rating and a 30 percent work disability. The respondent and its insurance carrier requested review of the Award and asked the Appeals Board to review the following issues:

- (1) Whether the relationship of employer and employee existed between claimant and respondent on the date of accident.
- (2) Nature and extent of disability.

Those are the only issues now before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be reversed.

- (1) The Administrative Law Judge found that claimant was a subcontractor of the respondent, AMRE, Inc., and, therefore, a statutory employee under the definition contained in K.S.A. 44-503. The Appeals Board agrees with the Administrative Law Judge that claimant was a subcontractor of AMRE, Inc. but, must disagree that claimant was a statutory employee.

Claimant's relationship with AMRE, Inc., was that of an independent contractor. AMRE, Inc., is in the business of marketing siding and windows. The company sells the product and hires installers to perform the installation. The company does not control the installers' work hours or days that they work, although it does demand that all jobs be performed in a professional manner in accordance with specifications. The installers must complete each job before they are paid on a piecework basis. Although the company provides materials, the installers provide their own tools and are responsible for hiring their own helpers. The company has no training program. When they begin installing for the company, the installers are advised they are subcontractors and not employees. Further, they are advised they are responsible for their own workers compensation insurance and are given the opportunity to obtain that insurance coverage through the company or by their own devices. Claimant chose to purchase his own coverage.

Based upon the entire record, the Appeals Board finds that claimant was an independent contractor rather than an employee of AMRE, Inc., on the date of accident. Because claimant was an independent contractor, claimant cannot be a statutory employee of AMRE, Inc., under K.S.A. 44-503 because claimant cannot be an employee of himself. See Allen v. Mills, 11 Kan. App. 2d 415, 724 P.2d 143 (1986).

(2) The above finding renders moot the issue of nature and extent of disability.

(3) The Appeals Board adopts the findings and conclusions of the Administrative Law Judge as set forth in the Award to the extent those findings and conclusions are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated June 29, 1995, entered by Administrative Law Judge Alvin E. Witwer should be, and hereby is, reversed and set aside; that the claimant is denied workers compensation benefits in this proceeding.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott M. Price, Salina, KS
Brian G. Boos, Shawnee Mission, KS
Robert L. Kennedy, Kansas City, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director